



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Decision F10-10

BC HOUSING MANAGEMENT COMMISSION

Michael McEvoy, Adjudicator

October 7, 2010

Quicklaw Cite: [2010] B.C.I.P.C.D. No. 49

CanLII Cite: 2010 BCIPC 49

Document URL: <http://www.oipc.bc.ca/orders/section56/DecisionF10-10.pdf>

Summary: The respondent sought to review BC Housing's decision not to release the names of fellow tenants who complained about her. BC Housing's request that this matter not proceed to inquiry is granted.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(c), 22(2)(f), 22(2)(g) and 22(2)(h) and 56(1).

Authorities Considered: B.C.: Decision F07-04, [2007] B.C.I.P.C.D. No. 20; Decision F08-08, [2008] B.C.I.P.C.D. No. 26; Decision F08-11, [2008] B.C.I.P.C.D. No. 36; Order F09-03, [2009] B.C.I.P.C.D. No. 5; Order 00-18, [2000] B.C.I.P.C.D. No. 21; Decision F08-06, [2008] B.C.I.P.C.D. No. 23; Order F07-19, [2007] B.C.I.P.C.D. No. 31.

1.0 INTRODUCTION

[1] The BC Housing Management Commission ("BC Housing") asks under s. 56 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") that an inquiry not be held regarding the respondent's request for review of the decision to withhold certain information. For reasons that follow, I have exercised my discretion to grant BC Housing's request.

2.0 DISCUSSION

The access request

[2] The respondent is a tenant in a building operated by BC Housing. A number of fellow tenants complained about her to BC Housing alleging, among other things, she created undue noise. The respondent requested copies of the complaints, which BC Housing provided except for the names of the complainants and any other information that might identify them. BC Housing took the position that disclosing the names would be an unreasonable invasion of those persons' privacy and asserted it was required to withhold them under s. 22 of FIPPA. The respondent disagreed and asked the Office of the Information and Privacy Commissioner ("OIPC") to review that decision. Subsequent to the issuance of a Notice of Inquiry on August 12, 2010, BC Housing requested¹ that the inquiry not proceed. In such cases, the onus is on the public body to demonstrate why the inquiry should not proceed.

Issue

[3] Section 56(1) of the Act reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[4] A number of previous decisions and Orders have laid out the principles for the exercise of discretion under s. 56. Decision F07-04² explains the criteria well:

Section 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As noted in earlier decisions, there are a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These include circumstances where the principles of abuse of process, *res judicata* or issue estoppel clearly apply. Other circumstances are where it is plain and obvious that the records in dispute are subject to an exception to disclosure or that they fall outside FIPPA's scope. In each case, however, it must be clear that there is no issue which merits adjudication in an inquiry. [citations omitted]

[5] I take the same approach here.

The arguments

[6] BC Housing owns and manages approximately 7,800 rental units in the Province. BC Housing's policy is to require that complaints by one tenant against another be in writing. BC Housing tells its tenants that it receives and treats all

¹ On August 13, 2010.

² Decision F07-04, [2007] B.C.I.P.C.D. No. 20; See also Decision F08-08, [2008] B.C.I.P.C.D. No. 26; and Decision F08-11, [2008] B.C.I.P.C.D. No. 36.

complaints in confidence. It says confidentiality is paramount because if tenants are concerned about retribution they will not notify the landlord when problems arise in a building. BC Housing explains that a Residential Tenancy Branch (RTB) arbitrator can admit a complaint as evidence in a landlord-tenant dispute only where that complainant consents to the disclosure his or her identity.

[7] BC Housing submits the identities of the complainants are clearly personal information under FIPPA. It argues that in the circumstances, especially s. 22(2)(f), disclosure of the requested information would constitute an unreasonable invasion of third party privacy. BC Housing notes it disclosed all other requested information to the respondent.

[8] The respondent says the complaints against her are serious and that BC Housing has acted on them by advising her that her tenancy is in jeopardy. She says that BC Housing has made an application against her at the Residential Tenancy Branch (RTB) and that a hearing is set for December 15, 2010 to determine the matter. She says the disclosed records have so much detail blacked out that she does not understand what the exact allegations are and how to respond to them properly. The respondent submits that, for her to make “full answer and defence” to the assertions, she needs to see the entire complaints including the names of those who have made allegations against her. The respondent argues that ss. 22(2)(c), (g) and (h) of FIPPA are circumstances that favour disclosure of the entire complaint letters.

[9] BC Housing replies there is no need for the respondent to answer the complaints. It says the hearing slated for December 15, 2010 has nothing to do with the complaint letters. BC Housing submits the respondent is fully aware the December RTB hearing only concerns money it says the respondent owes for alleged damages to her former apartment. For this reason, BC Housing argues that the withheld information is irrelevant to a fair determination of her rights before the upcoming RTB arbitration.

[10] BC Housing submits that other circumstances the respondent argues weigh in favour of disclosure under s. 22 of FIPPA are also irrelevant. It also contends that, if anything, s. 22(2)(g) and (h) cited by the respondent actually weigh in favour of withholding the information, not its disclosure.

The only relevant circumstance here, BC Housing argues, is s. 22(2)(f) because the complainants provided the information in confidence and it favours withholding the information.

[11] BC Housing argues the respondent provides no cogent basis or evidence for arguing the result in this case should be any different from other cases that have found disclosure of this kind of information would be an unreasonable invasion of third party privacy. In short, BC Housing argues there is no arguable case that merits an inquiry here.

Findings

[12] As noted above, the issue in this case is whether BC Housing has demonstrated it is plain and obvious that s. 22 of FIPPA applies and that there are no arguable issues.

[13] Those parts of s. 22 the parties identify as relevant to this proceeding are as follows:

Disclosure harmful to personal privacy

22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable, and

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

[14] There is no dispute that the withheld complainant names and information identifying the complainants are recorded information about identifiable individuals. It is therefore "personal information" as defined in Schedule 1 of FIPPA. It is also clear BC Housing obtained the complainants' names confidentially, consistent with its 40-year-old policy.³ The respondent does not contest this point either, only asserting this policy does not protect what she views as her rights. Past orders have determined the disclosure of the kind of information at issue here would be an unreasonable invasion of third party privacy and therefore a public body must not release it.⁴ Order 00-18, for example, found the public body properly withheld, under s. 22(1), the identity of a complainant to the Motor Vehicle Branch that a person was unfit to drive a car. Commissioner Loukidelis found this information was confidentially provided and no other circumstances weighed in favour of its disclosure. Further, Senior Adjudicator Francis concluded in Decision F08-06 it was plain

³ Applicant's s. 56 submission, p. 2.

⁴ See for example F09-03, [2009] B.C.I.P.C.D. No. 5; Order 00-18, [2000] B.C.I.P.C.D. No. 21; Decision F08-06, [2008] B.C.I.P.C.D. No. 23.

and obvious that s. 22(1) protected information that included the names of complainants in a municipal property use dispute. As a result, she found that an inquiry under s. 56 was not required.

[15] The respondent does not have the burden of showing why the inquiry should proceed. However:⁵

...where it appears obvious from previous orders and decisions that the outcome of an inquiry will be to confirm that the public body properly applied FIPPA, the respondent must provide “some cogent basis for arguing the contrary.”

[16] The respondent’s main argument is that she requires the disclosure of the names to make “full answer and defence” to allegations against her at the December 15, 2010 RTB arbitration. This would be an arguable contention if true. However, it is evident from its submission, and I accept, that BC Housing does not rely on those allegations in its RTB action against the respondent. Therefore, the respondent’s argument that the personal information is “relevant to a fair determination of her rights” is without any cogent basis. Indeed the submissions satisfy me that an RTB arbitration would only entertain the allegations in question if the identities of the complainants were revealed. This would address the respondent’s concern about being able to make full answer to potential complaints brought against her in any future proceedings.

[17] Finally I find there is no arguable case that the factors in ss. 22(2)(g) and (h) are circumstances that support the respondent’s position in this case. Past orders considering these provisions find that they are circumstances aimed at protecting information from release rather than favouring disclosure.⁶

[18] In conclusion, I find it plain and obvious that s. 22(1) applies here and there are no arguable issues that merit an inquiry.

4.0 CONCLUSION

[19] For reasons given above, this matter will not proceed to an inquiry under Part 5 of FIPPA.

October 7, 2010

ORIGINAL SIGNED BY

Michael McEvoy
Adjudicator

OIPC File: F09-40295

⁵ See for example Decision F08-11, [2008] B.C.I.P.C.D. No. 36, at para. 8.

⁶ See for example F07-19, [2007] B.C.I.P.C.D. No. 31, at para. 54.